

Defendants.

FINAL PRETRIAL ORDER

- (1) This is an action for alleged patent infringement and the subject matter jurisdiction of the court is invoked under 28 U.S.C §§ 1331 and 1338(a). Personal jurisdiction is not disputed.
- (2) The following stipulations and statements were submitted and are attached to and made a part of this Order:

 - (a) A comprehensive stipulation or statement of all uncontested facts, which will become a part of the evidentiary record in the case and which may be read to the jury by the Court or any party, is attached as Exhibit 1 hereto.
 - (b) An agreed description of the case to be read to prospective jurors is set forth in Exhibit 2 hereto.
 - (c) A list of agreed exhibits is attached as Exhibit 3 hereto; TT's exhibit list with eSpeed's objections is attached as Exhibit 4 hereto; eSpeed's exhibit list with TT's objections is attached as Exhibit 5 hereto. The parties agree to exchange proposed demonstratives and rebuttal exhibits no later than 5:30 pm two evenings before their anticipated use, with objections to be served no later than 5:30 pm the

following evening. The parties shall use reasonable efforts to provide earlier notice.

- (d) TT's proposed witness list is attached as Exhibit 6 hereto; eSpeed's proposed witness list is attached as Exhibit 7 hereto. The parties agree to provide 72 hours advance notice of the witnesses they actually intend to call each trial day, together with a list of the exhibits they intend to use with each listed witness.
 - (e) With respect to expert witnesses, the parties agree to introduce their qualifications by testimony elicited during trial.
 - (f) Pursuant to the Court's order of August 22, 2007, the parties will provide the Court with highlighted copies of deposition designations annotated with counterdesignations and objections 2-3 days before their anticipated use.
 - (g) TT's itemized statement of damages is set forth in the expert report of Raymond Sims. TT reserves the right to supplement its itemized statement to include attorney's fees and costs as appropriate.
 - (h) The parties will provide statements of contested issues of facts and law, proposed jury instructions, proposed voir dire questions and proposed special questions for the jury by the time of the final pre-trial conference on September 6, 2007.
 - (i) The parties state that, as of the date that this pre-trial order is submitted to the Court, fact discovery and expert discovery have been completed in this case, subject to the resolution of any outstanding motions and with the following exceptions: expert report of Dan Slottje (8/30/07); continued deposition of Walter Buist (deposition dependent on TT's motion to show cause and eSpeed's motion in limine); deposition of Dan Durkin (8/30/07); deposition of Corbin Kidd (as yet unscheduled); deposition of David Klausner (8/31/07); deposition of Mark Lorin (deposition dependent on Court's decision on TT's Motion to Preclude); continued deposition of Laurent Havard (9/5/07); continued deposition of Philip Carre (9/6/07); deposition of Dan Slottje (9/7/07); deposition of the CME (as yet unscheduled; subject to objections from TT as detailed in TT's pending Motions to Preclude and Motion to Enforce the Scheduling Order). Absent stipulation or good cause shown, no further discovery shall be permitted.
 - (j) The parties have agreed to a schedule for submission of motions in limine. Opening motions in limine have been filed concurrently with this order. Opposition briefs are due September 3, 2007.
- (3) Trial of this case is scheduled for 3 weeks, commencing September 10, 2007.
- (4) This trial is a Jury ☒ Non-jury ☐ trial for all issues so triable. A concurrent non-jury trial on the issue of inequitable conduct will be held after the jury has left for the day.

- (5) The Court has determined that 9 jurors will be selected.
- (6) The Court has ruled on bifurcation. Inequitable conduct will be addressed concurrently in a non-jury trial after the jury has gone for the day. Damages and willfulness will be heard during the jury trial.
- (7) The parties do not consent to this case being reassigned to a magistrate judge for trial.
- (8) This Order will control the course of the trial and may not be amended except by consent of the parties and the Court, or by order of the Court to prevent manifest injustice.
- (9) Possibility of settlement of this case was considered and rejected by the parties.

Date: _____

James B. Moran
United States District Judge

s/ S. Richard Carden

s/ Raymond C. Perkins

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